

11 San Jose, California
Wednesday, April 2, 2025

12 TRANSCRIPT OF PROCEEDINGS OF THE OFFICIAL ELECTRONIC
13 SOUND RECORDING 11:04 - 11:10 and 11:44 - 11:47 = 9 MINUTES

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1 Wednesday, April 2, 2025

11:04 a.m.

2 P-R-O-C-E-E-D-I-N-G-S

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4 THE CLERK: Calling Civil 22-4547, Steven Rabin,
5 CPA, et al. versus Google, LLC.

6 Counsel, please state your appearances for the record.

7 MR. HELLER: Good morning, your Honor. Roger
8 Heller for Plaintiffs.

9 THE COURT: Welcome, Mr. Heller.

10 MS. FORDERER: Good morning, your Honor. Kristine
11 Forderer from Cooley, LLP, for Defendant Google.

12 THE COURT: Good morning. Welcome.

13 All right. We're here on discovery. I did grant the
14 sealing order that went along with the discovery issue.
15 There's a few layers of procedural issues on the discovery
16 issue presented. Let me pause there to see if there's been
17 any expanding or narrowing of the issues before I took the
18 bench.

19 MR. HELLER: So, I think the status of that is we
20 had agreed as a compromise that we would take annual numbers
21 instead of monthly numbers, and then we also agreed to limit
22 the -- the years that we were asking for this data for, and
23 I think the compromise offered on the other side was
24 basically -- well, let me just say there's sort of numerator
25 data and what we'll call denominator data.

1 The numerator data are the upgrades numbers, and on
2 that, I think what they've offered, there's sort of two
3 pieces of it, but then there's a -- a caveat. The first
4 piece, the numerator piece, they've said they can break the
5 numbers that they've provided down between U.S. and non-
6 U.S., and I believe they already have that packaged and
7 ready.

8 The second part, the denominator part, they told us
9 yesterday that they don't have -- they don't have that data
10 from before 2020, that that got -- that, you know, got
11 deleted as part of their regular process but then the
12 process changed in 2020, and, so, they do have numbers
13 starting sometime in 2020 so they could provide annual
14 figures for 2020 and 2021. So, that -- if they provided
15 that -- and -- and I will say there is sort of the -- we
16 would want to have the total and the U.S. -- the actual U.S.
17 portion of that. Assuming they were going to do that, that
18 would be basically agreeing to give us what -- what we've
19 asked for at least in the -- our compromised position.

20 But there -- there is a catch. The catch is if they
21 want us to essentially waive the right to show the Court
22 what the numbers are in -- a part of the class certification
23 proceedings, right, in other words, that we -- we can sort
24 of bring it up now that we're -- procedurally at the time
25 we're filing our reply. And, so, we don't think that's

1 right for multiple reasons.

2 THE COURT: All right. Thank you. And, as to the
3 proposed compromise on the Plaintiffs' side, with the annual
4 data limited to certain years, what are the years under your
5 proposed compromise that you will be seeking?

6 MR. HELLER: The years that we were proposing
7 would be the same for the sort of limited numerator data
8 they've provided so far, which is 2016 through 2021. But
9 for the -- as I mentioned, for the denominator, they're
10 saying they don't have it for 2016 through 2019.

11 THE COURT: All right. Thank you. Let me get
12 Google.

13 MS. FORDERER: So, I -- Mr. Heller correctly
14 stated the status of our -- of our conversations. We had
15 discussed potentially a compromise that would have resolved
16 this issue prior to the hearing. However, because we were
17 not able to reach a compromise, it is still Google's
18 position that the arguments that were made in the briefs
19 apply, that Google is not obligated to provide this
20 information at all. Of course, we're always looking to
21 compromise. However, it is very important for us to be
22 assured that we won't be sort of sandbagged on -- in their
23 reply brief with this data, and we don't think there's any
24 justification given -- at this point for them to raise this
25 argument and provide new data with their reply brief. And,

1 so, that has been somewhat of a sticking point between us in
2 terms of our ability to resolve this dispute, in addition to
3 the other points raised in the -- in the motion.

4 THE COURT: All right. Thank you.

5 Here's my ruling on the first procedural issue, which
6 is there good cause to have another request. And my ruling is
7 I find good cause to entertain this request. Without
8 setting some exemplar for other cases, it's -- it's one
9 request. I find good cause, and I find that it relates to
10 the issues in the case. So, it's -- it's real, and I'm
11 going to allow the conversation about it. That doesn't mean
12 I'm granting the ultimate relief, but we're going to have
13 the conversation about it.

15 And the remaining question is is it proportional to the
16 needs of the case, and that's a -- it's a balancing test, a
17 balancing test that you can -- you have and could continue
18 to negotiate about to find some middle ground.

19 And my ask of you is to spend a few more minutes seeing
20 if you can find some middle ground. You have discussed them
21 already, and if you can't find middle ground, I'll rule as
22 soon as I finish my Zoom hearings.

23 The further guidance is as to the use of whatever's
24 provided, one of the things you're talking about is a -- you
25 know, the use in briefing to the District Court Judge.

1 Ultimately that -- that's a question that could go to this
2 Court judge as to what the judge is going to allow and
3 whether there should be, you know, an extension of briefing
4 or a response if there's something you want to reply. There
5 are some things which are outside my control. So, I'm not
6 sure that I would impose some limit on the District Court
7 Judge's consideration of some evidence, which really seems
8 like a question that should go more to the District Court
9 Judge. But I just throw that out there as far as your
10 reaction to one of the deal points. And I'll ask you to
11 confer for another 20 minutes to see if you can work out a
12 proportional compromise. And, if not, I'll hear your
13 further arguments as to why I should grant one or the other
14 position.

15 So, thanks very much.

16 MR. HELLER: Certainly.

17 MS. FORDERER: Thank you.

18 THE COURT: We're off the record as to the first
19 in-person hearing.

20 (Proceedings recessed briefly.)

21 THE CLERK: Back on the record, your Honor

22 MR. HELLER: So, I think we have a deal.

23 THE COURT: Great. What's the deal?

24 MR. HELLER: The deal -- and correct me if I get
25 any of this wrong -- for the numerator data or the upgrades

1 data, they are going to provide the annual figures from 2016
2 to 2021 broken out by U.S. and non-U.S. I guess by --
3 everything that's not U.S. I guess is non-U.S. And for the
4 denominator data, for a day of our choice in 2020 and a day
5 of our choice in 2021, they'll provide those figures, the
6 active user -- the active accounts data broken out by total
7 and U.S.

8 The -- the data will all be provided by one week from
9 today, so April the 9th. And verifications will follow one
10 week later, April the 16th.

11 Is that right?

12 MS. FORDERER: Yes. My only clarifying points
13 would be that the day of your choice in 2020 has to be after
14 August 26, which I think we understand.

15 MR. HELLER: Yeah.

16 MS. FORDERER: And then if -- if this is going --
17 THE COURT: After August 26, 2020?

18 MS. FORDERER: Yes.

19 THE COURT: Thank you.

20 MS. FORDERER: Apologies, your Honor.

21 And if this is going in an order, I think it would be
22 best if we referred to it as the upgrades data and the
23 active user data as opposed to the numerator and the
24 denominator, because that's not -- that refers to how you
25 are thinking about it and using it and doesn't track to

1 the --

2 THE COURT: It is not going on an order. So --

3 MS. FORDERER: Okay.

4 THE COURT: -- as long --

5 MS. FORDERER: Great.

6 THE COURT: -- as long as you --

7 MS. FORDERER: Okay. I understand it, but --

8 THE COURT: The important thing is you understand
9 it.

10 MS. FORDERER: Perfect. Great. I didn't want to
11 endorse the -- the fraction.

12 MR. HELLER: One question that I have to clarify.

13 MS. FORDERER: Yeah.

14 MR. HELLER: With an active user, we mean accounts
15 with --

16 MS. FORDERER: Yes.

17 MR. HELLER: -- open accounts, right?

18 MS. FORDERER: Yes. So, we're talking about an
19 account that has at least one active user --

20 MR. HELLER: Right.

21 MS. FORDERER: -- on the day that we're --
22 whatever day you tell me.

23 MR. HELLER: Twenty-eight day criteria?

24 MS. FORDERER: Yeah.

25 THE COURT: Okay. We're -- we're on the same

1 page, your Honor.

2 MS. FORDERER: Yeah.

3 THE COURT: Great. And you agree you're on the
4 same page?

5 MS. FORDERER: I agree we're on the same page.

6 THE COURT: Very good. All right.

7 MS. FORDERER: Memorialized via email.

8 THE COURT: Memorialized via email.

9 And, Mr. Heller, did I cut -- cut you off or was there
10 any other component to --

11 MR. HELLER: No.

12 THE COURT: No?

13 MR. HELLER: I don't think so.

14 THE COURT: All right. Thank you. Then I will
15 reflect in our minutes that the parties did work out the
16 remaining discovery dispute on this topic in Docket 154 and
17 that no fees or costs are awarded as part of that, and thank
18 you for having worked it out.

19 ALL: Thank you, your Honor.

20 THE COURT: We're in recess. Have a great day.

21 (Proceedings adjourned at 11:47 a.m.)

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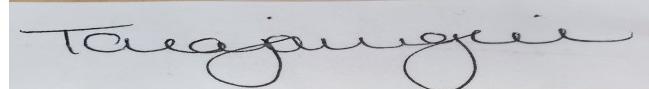
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9 I further certify that I am neither counsel for,
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11 in which this hearing was taken; and, further, that I am not
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13 action.

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16 Echo Reporting, Inc., Transcriber

17 Thursday, April 3, 2025

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